

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA

4 v. CRIMINAL NO. 05-3 ERIE

5 MICHAEL SMITH

6

7 CHANGE OF PLEA

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10 Proceedings held before the HONORABLE
11 SEAN J. McLAUGHLIN, U.S. District Judge,
12 in Courtroom C, U.S. Courthouse, Erie,
13 Pennsylvania, on Friday, March 11, 2005.

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17 APPEARANCES:

18 CHRISTIAN A. TRABOLD, Assistant United States
Attorney, appearing on behalf of the Government.19 THOMAS W. PATTON, Assistant Federal Public
Defender, appearing on behalf of the Defendant.

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25 Ronald J. Bench, RMR - Official Court Reporter

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1 P R O C E E D I N G S

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3 (Whereupon, the Plea proceedings begin at 1:25 p.m.,

4 on Friday, March 11, 2005, in Courtroom C.)

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6 THE COURT: All right, what counts are we pleading

7 to today?

8 MR. PATTON: One and two.

9 THE COURT: Mr. Smith, I'm informed that you wish to

10 change the plea that you have previously entered at Criminal

11 No. 05-3 to a plea of guilty, is that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: Before accepting your guilty plea, there

14 are a number of questions that I'm going to ask you to make

15 certain it is a valid plea. If you do not understand any

16 question, please tell me and I will explain it to you. If you

17 want to consult with Mr. Patton, tell me that and I will give

18 you the opportunity to consult. I give you these instructions

19 today because it is essential to a valid plea that you

20 understand all the questions before you answer them.

21 Would you please raise your right hand.

22 (Whereupon, the Defendant, MICHAEL SMITH, was

23 sworn.)

24 THE COURT: Would you please tell me your full name?

25 THE DEFENDANT: Michael Brad Smith.

1 THE COURT: And how old are you?

2 THE DEFENDANT: Twenty-seven.

3 THE COURT: How far did you go in school?

4 THE DEFENDANT: 10th grade.

5 THE COURT: Are you able to communicate in English?

6 THE DEFENDANT: Yes.

7 THE COURT: Mr. Patton, have you been able to

8 communicate with Mr. Smith in English?

9 MR. PATTON: Yes, your Honor. I believe you need to
10 add that since you have been sworn, your answers are subject to
11 the penalties of perjury.

12 THE COURT: Thank you, I appreciate that. Do you
13 understand that now that you have been sworn, your answers to
14 my questions are subject to the penalties of perjury or of
15 making a false statement, if you do not answer truthfully?

16 THE DEFENDANT: Yes.

17 THE COURT: Are you now or have you recently been
18 under the care of a physician or psychiatrist?

19 THE DEFENDANT: I'm taking an antidepressant, that's
20 it.

21 THE COURT: Pull the mike up just a little bit.

22 THE DEFENDANT: I'm taking an antidepressant, that's
23 it.

24 THE COURT: And that antidepressant drug doesn't
25 affect your ability to understand what's going on, does it?

1 THE DEFENDANT: No, sir.

3 besides that, or drunk any alcoholic beverages in the past 24
4 hours?

5 THE DEFENDANT: No.

6 THE COURT: Are you now or have you recently been
7 treated or hospitalized for any type of a narcotic addition?

8 THE DEFENDANT: No.

9 THE COURT: Do you understand what's happening here
10 today?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Does either counsel have any doubt about
13 the competence of this defendant to plead guilty at this time
14 to the charges contained in the Indictment; Mr. Patton?

15 MR. PATTON: No, sir.

16 THE COURT: Mr. Trabold?

17 MR. TRABOLD: No, your Honor.

18 THE COURT: I find that the defendant is competent
19 to plead. Do you have an attorney with you here today?

20 THE DEFENDANT: Yes.

21 THE COURT: What's his name?

22 THE DEFENDANT: Thomas Patton.

23 THE COURT: Are you happy with the work that he's

24 done for you?

25 THE DEFENDANT: Yes.

1 THE COURT: Have you had a sufficient opportunity to

2 discuss your case with him?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that if you continue

5 to plead not guilty and do not change your plea, you would have

6 the right to be assisted by an attorney at the trial of the

7 charge against you?

8 THE DEFENDANT: Yes.

9 THE COURT: And do you understand that if you did

10 not enter a guilty plea and if you qualified financially, you

11 would be entitled to be assisted by an attorney at no cost to

12 you?

13 THE DEFENDANT: Yes.

14 THE COURT: At every phase of the processing of the

15 charges?

16 THE DEFENDANT: Yes.

17 THE COURT: And do you understand that if you did

18 not plead guilty and if there were a trial, under the
19 Constitution and laws of the United States, you would be
20 entitled to a speedy trial by a judge and jury on the charge?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if there were a
23 trial, you would be presumed to be innocent at the trial of the
24 charge against you?

25 THE DEFENDANT: Yes.

1 THE COURT: And do you understand that if there were
2 a trial, the government would be required to prove your guilt
3 by competent evidence and beyond a reasonable doubt before you
4 could be found to be guilty?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if there were a
7 trial, you would not have to prove that you were innocent?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that if there were a
10 trial, the jury would have to be unanimous in order to find you
11 guilty of the charge against you?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that if there were a

14 trial, you would have the right to participate in the selection

15 of the jury; that you would have the right to strike or

16 eliminate any prospective juror if it was demonstrated that the

17 juror would be unable to render a fair and impartial verdict;

18 and that you would have the right to strike or eliminate ten

19 jurors from the jury, and one alternate, without giving any

20 reason at all for so doing?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if there were a

23 trial, the witnesses for the government would have to come here

24 and testify in court in your presence?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you understand that if there were a

2 trial, your counsel could cross-examine the witnesses for the

3 government, object to evidence offered by the government and

4 then offer evidence on your behalf?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that if there were a
7 trial, the government would have to pay witness fees to
8 witnesses you wished to call on your behalf, if you qualified
9 as being financially unable to do so?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that if there were a
12 trial, you would have the right to testify if you chose to
13 testify?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that if there were a
16 trial, you would have the right not to testify and that no
17 inference or suggestion of guilt could be drawn from the fact
18 that you did not testify?

19 THE DEFENDANT: Yes.

20 THE COURT: If you plead guilty and I accept your
21 plea, do you understand that you will waive your right to a
22 trial and the other rights I just mentioned to you, that there
23 will be no trial, and that I will enter a judgment of guilt and
24 Judge Cohill will sentence you on the basis of your guilty plea
25 after considering a presentence report?

1 THE DEFENDANT: Yes.

2 THE COURT: If you plead guilty, do you also
3 understand you'll have to waive your right not to incriminate
4 yourself, because I'm going to ask you questions about what you
5 did in order to satisfy myself that you are guilty as charged
6 and that you will have to acknowledge your guilt?

7 THE DEFENDANT: Yes.

8 THE COURT: Now that I have mentioned your rights to
9 you, do you still want to plead guilty?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Have you received a copy of the
12 Indictment naming you, and have you discussed with Mr. Patton
13 the charges in the Indictment to which you are going to be
14 pleading guilty today?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that you are charged
17 in Count One as follows: "On or about December 17, 2004, in
18 the Western District of Pennsylvania, the defendant, Michael
19 Smith, by force, violence and intimidation, did take and
20 attempt to take from the person and presence of another, money,

21 namely, \$22,789.40 belonging to and in the care, custody

22 control, management and possession of Marquette Savings Bank,

23 3404 Liberty Street, Erie, Pennsylvania, 16508, a bank the

24 deposits of which were then insured by the Federal Deposit

25 Insurance Corporation.

1 In violation of Title 18, United States Code,

2 Section 2113(a)." Do you understand the charge?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that you are charged

5 in Count Two of the Indictment as follows: "On or about

6 December 17, 2004, in the Western District of Pennsylvania, the

7 defendant, Michael Smith, by force, violence and intimidation,

8 did take and attempt to take from the person and presence of

9 another, money, namely \$22,789.40, belonging to and in the

10 care, custody, control, management and possession of Marquette

11 Savings Bank, 3404 Liberty Street, Erie, Pennsylvania, 16508, a

12 bank the deposits of which were then insured by the Federal

13 Deposit Insurance Corporation; and in committing such offense,

14 the defendant, Michael Smith, did assault and put in jeopardy

15 the life of another person by use of a dangerous weapon, that

16 is a BB gun.

17 In violation of Title 18, United States Code,

18 Section 2113(d)." Do you understand that charge?

19 THE DEFENDANT: Yes.

20 THE COURT: As to Count One, do you understand that

21 in order for the crime of bank robbery to be established, the

22 government must prove all of the following essential elements

23 beyond a reasonable doubt:

24 On or about the date set forth in the Indictment,

25 Marquette Savings Bank was an institution the deposits of which

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1 were insured by the Federal Deposit Insurance Corporation.

2 Second, that the money, property or other thing of

3 value the defendant took or attempted to take belonged to or

4 was in the care, custody, control, management or possession of

5 the bank.

6 And third, that the defendant took or attempted to

7 take the money property or other thing of value from the person

8 or in the presence of another, and did so by force and violence

9 or by acting in an intimidating manner.

10 Do you understand the elements insofar as Count One
11 is concerned?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that insofar as Count
14 Two concerned, that in order for the crime of use of a
15 dangerous weapon in connection with bank robbery, the
16 government must prove all of the following essential elements
17 beyond a reasonable doubt:

18 That on or about the date set forth in the
19 Indictment, Marquette Savings Bank was an institution the
20 deposits of which were insured by the Federal Deposit Insurance
21 Corporation.

22 Second, that the money, property or other thing of
23 value the defendant took or attempted to take belonged to or
24 was in the care, custody, control, management or possession of
25 the bank.

1 And, three, the defendant took or attempted to take
2 the money, property or other thing of value from the person or

3 in presence of another, and did so by force and violence or by

4 acting in an intimidating manner.

5 And, four, in committing the crime, the defendant

6 either assaulted one or more persons by the use of a dangerous

7 weapon or put one or more persons lives in jeopardy by the use

8 of a dangerous weapon. Do you understand the elements as to

9 Count Two?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that the maximum

12 penalty for a violation of Count One is a term of imprisonment

13 of not more than 20 years; a fine not more than the greater of

14 \$250,000; or an alternative fine in an amount not more than the

15 greater of twice the gross pecuniary gain to any person or

16 twice the pecuniary loss to any person other than the

17 defendant, unless the imposition of this alternative fine would

18 unduly complicate or prolong the sentencing process.

19 A term of supervised release of not more than three

20 years.

21 As well as a mandatory special assessment of \$100.

22 Do you understand the maximum penalty as to that

23 count?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand the maximum penalty as

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1 to Count Two, use of a dangerous weapon in connection with bank
2 robbery, is a term of imprisonment of not more than 25 years.

3 A fine not more than the greater of \$250,000; or an
4 alternative fine in an amount not more than the greater of
5 twice the gross pecuniary gain to any person or twice the
6 pecuniary loss to any person other than the defendant, unless
7 the imposition of this all alternative fine would unduly
8 complicate or prolong the sentencing process.

9 A term of supervised release of not more than three
10 years.

11 As well as a mandatory special assessment of \$100.

12 Do you understand the maximum penalty as to Count
13 Two?

14 THE DEFENDANT: Yes.

15 THE COURT: Has anybody made any threat to you or to
16 anyone else that has caused you in any way to plead guilty
17 today?

18 THE DEFENDANT: No.

19 THE COURT: Has there been a plea agreement?

20 MR. TRABOLD: No, your Honor.

21 THE COURT: Okay. Do you understand that the

22 offense to which you are pleading guilty is a felony offense;

23 that if your plea is accepted you will be adjudged guilty of

24 that offense and that such adjudication may deprive you of

25 valuable civil rights, such as the right to vote, hold public

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1 office, the right to serve on a jury and the right to possess

2 firearms; do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: Under the Sentencing Reform Act of 1984,

5 the United States Sentencing Commission has issued guidelines

6 for judges to follow in determining sentences in criminal cases

7 for offenses occurring after November 1, 1987. Have you and

8 your attorney talked about how the Sentencing Guidelines might

9 apply to your case and the fact that the suggested guideline

10 ranges are now advisory by virtue of two recent Supreme Court

11 decisions?

12 THE DEFENDANT: Yes.

13 THE COURT: And do you understand that Judge Cohill
14 will not be able to determine the guideline sentence for your
15 case until the presentence report has been completed and you
16 and the government have had an opportunity to challenge the
17 facts that are reported by the probation office?

18 THE DEFENDANT: Yes.

19 THE COURT: And do you understand that after it has
20 been determined what guideline sentence applies, the judge has
21 the authority to impose a sentence that is more severe or less
22 severe than the sentence called for by the Sentencing
23 Guidelines?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand that under certain

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1 circumstances you or the government may have the right to
2 appeal any sentence that Judge Cohill imposes?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that parole has been
5 abolished, and that if you are sentenced to a term of
6 imprisonment, you will not be released on parole?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that if the sentence

9 is more severe than you expected it to be, you will still be

10 bound by your guilty plea and that you will have no right to

11 withdraw it?

12 THE DEFENDANT: Yes.

13 THE COURT: Except for your discussions with Mr.

14 Patton about the Sentencing Guidelines, has anybody made any

15 prediction or promise to you about what your sentence is going

16 to be?

17 THE DEFENDANT: No.

18 THE COURT: Has anything I have said here today

19 suggested to you what your actual sentence will be?

20 THE DEFENDANT: No.

21 THE COURT: Have you been instructed by Mr. Patton,

22 by government counsel, or by anybody else to respond

23 untruthfully to any question about a promised sentence?

24 THE DEFENDANT: No.

25 THE COURT: Did you, as charged in Counts One and

1 Two, and as previously read to you by me commit those offenses?

2 THE DEFENDANT: Yes.

3 THE COURT: What would be the government's proof

4 here, Mr. Trabold.

5 MR. TRABOLD: Your Honor, on December 17, 2004, a

6 white male entered the Marquette Savings Bank at 3404 Liberty

7 Street in the city of Erie, an institution insured by the FDIC.

8 Approached the teller with was thought at the time to be a

9 handgun, drew the weapon on the teller and demanded money from

10 her drawer. The teller then complied and emptied her money.

11 This white male then went to the next teller and demanded

12 money, received all the money at that teller's drawer. Then

13 went to a third teller, did the same thing and received all the

14 money from the teller's drawer.

15 In the intervening time period of going from teller

16 to teller, this white male pointed his weapon at a customer who

17 was in line and told that customer to back away.

18 After receiving \$22,789.40 from the tellers, the

19 white male then fled the bank on foot. Shortly thereafter, a

20 foot chase ensued between the white male and the Erie police.

21 Ultimately, this foot chase went through a number of yards,

22 backyards and areas, with the white male throwing down various

23 items that he had, including items of clothing. At the

24 conclusion of the foot chase, Mr. Smith was apprehended.

25 He was then brought to the Erie police station,

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1 where after being questioned, he confessed to his involvement

2 in this crime.

3 Subsequent to that it was also determined that Mr.

4 Smith had three bait bills which were given to --

5 THE COURT: I'm sorry, three what?

6 THE WITNESS: Three bait bills, which were given to

7 the robber of a bank in the Warren area, a bank robbery that

8 occurred two days prior to this bank robbery.

9 There is one other thing I want to say for the

10 record. That the weapon that Mr. Smith had, it's indicated in

11 the indictment, it was later determined to be a BB gun.

12 THE COURT: Okay. Mr. Smith, you just heard what

13 Mr. Trabold said by way of summary, do you agree with

14 everything that he said?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you still want to plead guilty?

17 THE DEFENDANT: Yes.

18 THE COURT: Is it your advice that he do so, Mr.

19 Patton?

20 MR. PATTON: Yes, your Honor.

21 THE COURT: Because you acknowledge that you are in

22 fact guilty as charged at Counts One and Two, because you know

23 about your right to a trial, because you know what the maximum

24 possible penalty is, and because you are voluntarily pleading

25 guilty, I will accept your guilty plea and enter a judgment of

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1 guilty on your plea to Counts One and Two of Indictment No.

2 05-3 Erie.

3 It is, therefore, the finding of the court in the

4 case of United States v. Michael Smith that the defendant is

5 fully competent and capable of entering an informed plea, and

6 that his plea of guilty is a knowing and voluntary plea

7 supported by an independent basis in fact containing each of

8 the essential elements of the offense and that, therefore, the

9 plea is accepted and this defendant is now adjudged guilty of

10 the charges as set forth in Counts One and Two.

11 Would you please execute the change of plea.

12 (Whereupon, the Change of Plea was executed by the

13 Defendant and Defense Counsel.)

14 THE COURT: A presentence investigation report will

15 be prepared by the probation officer, and it is in your best

16 interests to cooperate with the probation officer in furnishing

17 information for the report because that report will important

18 in Judge Cohill's decision about what your sentence will be.

19 You and your counsel will have the right and will have the

20 opportunity to examine the content of the report before

21 sentencing.

22 Disposition of sentencing in this case will be at a

23 time and place set by Judge Cohill's chambers. All right,

24 we're adjourned.

25 (Whereupon, at 1:42 p.m., the Plea proceedings were

1 concluded.)

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7 C E R T I F I C A T E

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10 I, Ronald J. Bench, certify that the foregoing is a

11 correct transcript from the record of proceedings in the

12 above-entitled matter.

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16 _____

17 Ronald J. Bench

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